



U.S. Citizenship
and Immigration
Services

D-7

JUN 23 2004

FILE: EAC 00 145 51733 Office: VERMONT SERVICE CENTER Date:

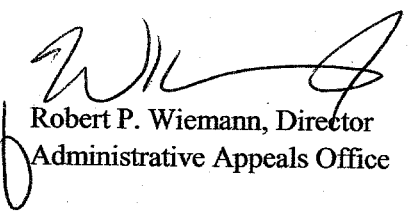
IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as an exporter of paper waste products. It seeks authorization to change the beneficiary's status to that of an employee working in a specialized knowledge capacity and to extend the beneficiary's stay in the United States for an additional three years at an annual salary of \$50,000. The director denied the petition based on his determination that the petitioner had not established that the beneficiary had been or would be employed in a managerial or executive capacity. The director failed to consider the petitioner's request to change the beneficiary's visa classification from an L-1A manager or executive to an L-1B employee possessing specialized knowledge. Therefore, the director's decision will hereby be withdrawn.

On appeal, counsel disputes the basis for the director's denial and submits a brief asserting that the beneficiary will be employed in the United States as an employee who possesses specialized knowledge.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

At issue in this proceeding is whether the petitioner has established that the beneficiary would be employed in a capacity that involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

An alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) states:

Specialized Knowledge means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or

other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In support of the petition, the petitioner submitted a statement describing the beneficiary's job duties over the course of the petitioner's first year of operation. A list of the beneficiary's proposed job duties was not provided.

On May 9, 2000, the director issued a request for additional evidence instructing the petitioner to submit a complete job description of the beneficiary's proposed duties, including a weekly breakdown of the number of hours the beneficiary would devote to each of the duties listed in the job description.

The petitioner's response contains the following statement regarding the beneficiary's job duties:

[The beneficiary] has been and will continue to serve as the President of [the petitioner]. This position requires his specialized knowledge of [the foreign entity's] services, processes, procedures of the cargo forwarding of wastepaper in order to develop the business of [the petitioner] and to turn it into a successful enterprise. [The beneficiary] has used his specialized knowledge to: act as a coordinator between sellers of cargo in the United States and the buyers of such cargo in India, these being the clients of [the foreign entity], contact several of the paper sellers of paper mills in the United States as they will be supplying [the petitioner] with the materials that they would eventually be exporting; negotiate with several companies in India concerning the export business of [the petitioner], transact several Letters of Credit for orders that are currently being executed; successfully execute two consignments to India and meet and open negotiations with several new potential business partners for [the petitioner].

Although requested to do so, the petitioner failed to provide a detailed hourly breakdown of the beneficiary's duties and failed to specify which of the above duties the beneficiary would continue to perform under the new visa classification.

On appeal, counsel claims that the beneficiary would be employed in a specialized knowledge capacity "by virtue of his *specialized knowledge* of the company's business and the waste paper business as well as his managerial and executive experience . . . in India." Counsel also provides the following description of the beneficiary's proposed duties:

[The beneficiary's] prime responsibility is to locate and identify the right waste paper cargo in accordance with [the foreign entity's] clients' specifications. In doing so, [the beneficiary] must negotiate prices with wholesale merchants located all over the United States who deal in the specialized grade of paper demanded by [the foreign entity's] clients. He must ensure that the waste paper conforms to the quality and specifications set forth by the Paper Stock Institute of America.

Counsel stressed the beneficiary's many years of experience in the waste paper industry and stated further that only an individual possessing the beneficiary's kind of specialized knowledge, which he gained throughout his many years of working with the petitioner's specific products, would be able to meet the petitioner's clients' product needs.

As previously cited by the director, in *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), the Commissioner held that "petitions may be approved for persons with specialized knowledge, not for skilled workers." In the instant case the petitioner has successfully demonstrated that the beneficiary is knowledgeable in the waste paper field. However, the plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. Contrary to counsel's arguments, mere familiarity, or even years of experience, with an organization's product or service, does not constitute special knowledge under section 214(c)(2)(B) of the Act. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he would be employed primarily in a specialized knowledge capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the record lacks sufficient evidence to establish that the beneficiary's employment abroad was in a qualifying capacity. The record indicates that prior to the beneficiary's transfer to the United States, his job duties included handling all duties associated with importing and exporting cargo to and from India. The record suggests that the beneficiary performed, rather than managed, an essential function. However, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Furthermore, the record also lacks evidence to suggest that the beneficiary managed any managerial or professional employees. It is noted that an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). As such, due to the additional grounds discussed in this paragraph, this petition cannot be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.